

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-085

Complainant: No. 1439210967A

Judge: No. 1439210967B

ORDER

The complainant alleged that a superior court judge engaged in judicial misconduct by making numerous legal errors in his post-conviction relief proceeding.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to investigate the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: June 7, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on June 7, 2012.

This order may not be used as a basis for disqualification of a judge.

APR 04 2012

TO: COMMISSION ON JUDICIAL PERFORMANCE REVIEW

3/19/12

FROM: RUSSELL L. GARCIA # 229692

RE: HONORABLE CELE' HANCOCK; P1300CR2008-1442

AS AN INDEPENDENT, FAIR, AND IMPARTIAL JUDICIARY IS INDISPENSIBLE TO OUR SYSTEM OF JUSTICE, IT IS EXCEEDINGLY IMPORTANT TO ILLUMINATE YAVAPAI COUNTY SUPERIOR COURT JUDGE CELE' HANCOCK'S CONDUCT INCONSISTENT WITH CONSTITUTIONAL REQUIREMENTS, STATUTES, AND DECISIONAL LAW!

JUDGE HANCOCK'S MISUNDERSTANDING OF THE INEFFECTIVE ASSISTANCE OF COUNSEL STANDARDS INUNCIATED IN STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052 (1984), INCORRECTLY SHIFTED THE BURDEN TO THE DEFENDANT "TO SHOW" THAT COUNSEL'S CONDUCT WAS INEFFECTIVE PURSUANT TO STRICKLAND.

THROUGHOUT JUDGE HANCOCK'S POST-CONVICTION RELIEF DECISION DISMISSING DEFENDANT'S CLAIM, SHE USED DEFINITIVE LANGUAGE CONTRARY TO STRICKLAND. THE SUPREME COURT SPECIFICALLY EXPLAINED THAT A DEFENDANT "NEED NOT SHOW THAT COUNSEL'S DEFICIENT CONDUCT MORE LIKELY THAN NOT ALTERED THE OUTCOME IN THE CASE," 466 U.S. AT 693. HOWEVER, JUDGE HANCOCK RULED THAT: "THE DEFENSE "HAS FAILED TO PROVE," COUNSEL WAS INEFFECTIVE UNDER THE FIRST PRONG OF STRICKLAND, (ORDER P.4, ¶2); THE DEFENDANT "HAS FAILED TO SHOW" COUNSEL'S CONDUCT FALLS BELOW REASONABLE STANDARDS, (ORDER P.8, ¶6); DEFENDANT "HAS FAILED TO SHOW" COUNSEL'S CONDUCT FALLS BELOW REASONABLE STANDARDS, (ORDER P.8, ¶9), AMONG OTHER THINGS, INFRA!

1) DURING P.C.R. PROCEEDINGS, JUDGE HANCOCK RULED THAT

TRIAL COUNSEL'S ADMITTED FAILURE TO SEEK DISMISSAL OR
 DEMAND, PRIOR TO TRIAL, OF AN INDICTMENT OBTAINED BY THE
 KNOWING USE OF PERJURED TESTIMONY NEED NOT BE
 ADDRESSED BY THE COURT AT ALL "AS THE TRIAL HAS
 CONCLUDED AND THE ISSUE IS MOOT," (ORDER P. 6, P. 7).

AS COUNSEL'S PRE-TRIAL CONDUCT WAS THE POST-
 CONVICTION PROCEEDING'S CENTRAL THEME, JUDGE HANCOCK'S
 REFUSAL TO RECOGNIZE THAT COUNSEL'S FAILURE TO PURSUE
 CORRECTION OF THIS SUBSTANTIAL, PROCEDURAL DUE PROCESS
 ERROR MUST BE "VIEWED AS OF THE TIME OF COUNSEL'S
 CONDUCT," 466 U.S. AT 690, 104 S. CT., AT 2006, NOT THROUGH THE
 DISTORTING LENS OF HINDSIGHT, WAS AN ABUSE OF DISCRETION.

COUNSEL'S FAILURE TO PROVIDE EFFECTIVE ASSISTANCE DEPRIVED
 DEFENDANT OF HIS DUE PROCESS RIGHT TO THE FAIR AND
 IMPARTIAL PRESENTATION OF EVIDENCE REQUIRED BY ARTICLE 2
 SECTION 4 OF THE ARIZONA CONSTITUTION, THE FIFTH AND
 FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION,
 AND RULE 12.9(A), ARIZONA RULES OF CRIMINAL PROCEDURE!

ACCORDINGLY, JUDGE HANCOCK'S RULING VIOLATED CANON 1,
 RULE 1.1; AS IT DID NOT COMPLY WITH CONSTITUTIONAL OR
 STATE LAW. IT ALSO VIOLATED CANON 2, RULE 2.2; AS IT WAS
 NOT IMPARTIAL AND FAIR, AND RULE 2.5; AS IT EXHIBITS A
 LACK OF COMPETENCE AND DILIGENCE.

2) THROUGHOUT P.C.R. PROCEEDINGS, DEFENDANT, ACCUSED OF CHILD
 ABUSE, QUESTIONED THE "REASONABLENESS" OF TRIAL COUNSEL'S FAILURE
 TO INVESTIGATE OR OBTAIN THE ALLEGED VICTIM'S EXCULPATORY

THERAPY RECORDS.

JUDGE HANCOCK RULED THAT, "GIVEN THE CONFIDENTIAL NATURE OF THE DOCUMENTATION, IT IS UNLIKELY THAT THE DOCUMENTS WOULD BE DISCLOSED TO THE DEFENSE," A.R.S. § 32-5283(A), AND THAT COUNSEL'S "FAILURE TO REQUEST THE RECORDS DOES NOT RISE TO THE LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL PURSUANT TO STICKLAND," (ORDER P.6, TP3-4).

EVEN AFTER BEING ADVISED OF ARIZONA REVISED STATUTE SECTION 13-3620, SUBSECTION (C)(1), JUDGE HANCOCK REFUSED TO RECONSIDER HER DECISION.

NOT ONLY IS ARIZONA CASE LAW LEGION RELATING TO PRIVILEGE DURING CHILD ABUSE PROCEEDINGS, BUT A.R.S. § 13-3620 PLAINLY AND UNAMBIGUOUSLY DISMANTLES EVERY PRIVILEGE, EXCEPT THE ATTORNEY-CLIENT PRIVILEGE, WHEN A CHILD'S ABUSE IS AT ISSUE. STATE EX. REL. UDALL V. SUPERIOR COURT, 183 ARIZ. 462, 904 P.2d 1286 (1995).

JUDGE HANCOCK'S RULING, THEREFORE, VIOLATED ARIZONA RULES OF THE SUPREME COURT, JUDICIAL ETHICS CANON 1, RULE 1.1; CANON 2, RULES 2.2 AND 2.5; AS THIS SPECIFIC RULING DID NOT COMPLY WITH STATE LAW, OR SUPPLY THE LEGAL SKILL, KNOWLEDGE, THOROUGHNESS, AND PREPARATION DEMANDED OF THE JUDICIARY.

FURTHERMORE, THIS RULING CONDONES THE YAVAPAI COUNTY ATTORNEY'S 20-MONTH SUPPRESSION OF THE FAVORABLE, UNPROTECTED RECORDS, AND THEIR REFUSAL TO ACCEDE TO THIS SPECIFIC DEFENSE REQUEST IN VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196-1197, 10 L.Ed.2d 215 (1963); UNITED STATES V. AGUIRRE, 427 U.S. 47, 112-113, 96 S.Ct. 2392, 2401-2402, 49 L.Ed.2d 342 (1976).

3) JUDGE HANCOCK ADDITIONALLY RULED THAT COUNSEL'S TOTAL NEGLIGENCE OF HIS "DUTY TO INVESTIGATE," STICKLAND, 466 U.S. AT 678, WAS "NOT UNREASONABLE," (ORDER P.5, ¶6-7).

JUDGE HANCOCK'S UNINFORMED RULING IS MINDBOGGLING IN LIGHT OF THE SIXTH AMENDMENT'S CONSTITUTIONAL REQUIREMENT, STICKLAND, SUPRA, AND POWELL V. ALABAMA, 287 U.S. 45, 57, 53 S. CT. 55, 77 L. ED. 158 (1932), WHICH DESCRIBED THE PRE-TRIAL PERIOD AS "PERHAPS THE MOST CRITICAL PERIOD OF THE PROCEEDINGS... THAT IS TO SAY, FROM THE TIME OF THEIR ARRAIGNMENT UNTIL THE BEGINNING OF THEIR TRIAL, WHEN CONSULTATION, THOROUGH-GOING INVESTIGATION AND PREPARATION WERE VITALLY IMPORTANT."

COUNSEL'S REFUSAL TO INTERVIEW ANY STATE OR DEFENSE WITNESSES, DISCOVER WELL-KNOWN PRIVILEGE ABOLISHING STATUTES, INVESTIGATE EXCULPATORY EVIDENCE, EXPOSE THE STATUTORY DEFINITION OF "THREATS," TEST THE STATE EXPERT'S QUALIFICATION, OR IMPEACH WITNESSES WITH PRIOR INCONSISTENT STATEMENTS IS SO FAR BELOW PREVAILING PROFESSIONAL STANDARDS IT SATISFIES STICKLAND'S FIRST PRONG, AND WAS SO SEVERELY LACKING THAT THE VERDICT "WOULD REASONABLY LIKELY HAVE BEEN DIFFERENT ABSENT THE ERRORS," 466 U.S. AT 692, 104 S. CT. AT 2064; UNDER THE SECOND PRONG, JUDGE HANCOCK DID NOT AGREE.

CONCLUSION:

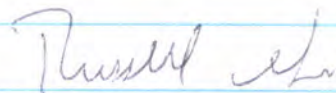
JUDGE CELE' HANCOCK'S INAPPROPRIATE RULINGS DIMINISH THE PRINCIPLES OF JUSTICE AND THE RULE OF LAW IN HER EFFORT TO BRAZENLY PROTECT INCOMPETENT DEFENSE COUNSEL FROM THE

JUDICIAL ACCOUNTABILITY POST-CONVICTION RELIEF PROCEEDINGS WERE DESIGNED TO EMBRACE, AND COMPROMISES THE INTEGRITY AND PUBLIC CONFIDENCE IN THE JUDICIARY!

AS JUDGE HANCOCK'S RULINGS VIOLATE CONSTITUTIONAL, STATE, AND DECISIONAL LAW, THEY MUST BE VIEWED AS ACTUAL IMPROPRIETIES ADVERSELY REFLECTING ON THE JUDGE'S HONESTY, IMPARTIALITY, TEMPERMENT, AND FITNESS TO SERVE AS JUDGE.

JUDGE HANCOCK'S IGNORANCE OF A DEFENDANT'S CONSTITUTIONALLY PROTECTED RIGHT TO DUE PROCESS, ARIZONA CHILD ABUSE MANDATORY REPORTING STATUTES DISMANTLING PRIVILEGE, AND DEFENSE COUNSEL'S SIXTH AMENDMENT "DUTY TO INVESTIGATE," DOES NOT REFLECT THE LEGAL KNOWLEDGE, SKILL, THOROUGHNESS, OR APTITUDE TO FULFILL THE REQUIREMENTS NECESSARY TO SERVE AS JUDGE!

SINCERELY,



RUSSELL LEE GARCIA

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